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IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION

FILED

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U.S. DISTRICT COURT
N.D. OF ALABAMA

RICHARD P. METTKE,

Plaintiff,

v.

HEWLETT PACKARD COMPANY and
NORTH COMMUNICATIONS, INC.,

Defendants.

CIVIL ACTION NO. _____

CV-97-TMP-3160-E

COMPLAINT

Plaintiff, Richard P. Mettke ("Mettke") by his undersigned attorneys, for his Complaint against Defendants Hewlett Packard Company ("HP") and North Communications, Inc. ("North") (also sometimes referred to collectively as "Defendants"), demands a trial by jury and states as follows:

I. The Parties

1. Mettke is an individual residing at 620 Shannahan Drive, Weaver, Alabama 36277.

2. On information and belief, HP is a domestic corporation organized and existing under the laws of California, having a principal place of business at 3000 Hanover Street, Palo Alto, California 94303-1185, and having a registered agent for service of process of CT Corp. Sys., Ky. Home Life Bldg., Rm. 1102, Louisville, KY 40202.

3. On information and belief, North is a domestic corporation organized and existing under the laws of California, having a principal place of business at 13274 Fiji Way, Marina del Rey, California 90292, and Michael North, having a principal place of business at 13274 Fiji Way, Marina del Rey, California 90292.

II. Jurisdiction and Venue

4. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code. Defendants have committed acts of patent infringement under 35 U.S.C. § 271 in this judicial district, and elsewhere.

5. This Court has jurisdiction of this action under 28 U.S.C. § 1338(a).

6. Venue is proper in this District under 28 U.S.C. § 1391(b) and 28 U.S.C. § 1400(b).

III. The Patent

7. United States Letters Patent No. 5,602,905 ("the '905 patent"), or "patent-in-suit" entitled "On-Line Communication Terminal/Apparatus," a copy of which is attached as Exhibit A, was duly and legally issued to Mettke on February 11, 1997.

8. All right, title and interest in and to the patent-in-suit are now owned by Mettke.

9. The invention described and claimed in the patent-in-suit was made in this judicial district by Mettke.

IV. The Infringing Acts

10. On information and belief, Defendants, by themselves and through others, have manufactured, offered for sale, sold, and/or used and continue to manufacture, offer for sale, sell and/or use internet access kiosks embodying the invention claimed in one or more of the claims of the patent-in-suit.

11. On information and belief, some or all of the infringing acts of Defendants related to these internet access kiosks have occurred in this judicial district.

12. These acts constitute infringement of the patent-in-suit under 35 U.S.C. § 271.

13. On information and belief, Defendant HP had actual knowledge of Mettke's invention and of the patent-in-suit prior to commencing certain of its acts of infringement.

V. Background of the Controversy

14. During the pendency of the application which issued as the patent-in-suit, Mettke wrote to HP, offering the invention disclosed and claimed in the patent-in-suit to HP in exchange for a license or some other business arrangement.

15. HP wrote back to Mettke and informed Mettke that, at that time, HP had no interest in Mettke's invention, suggesting that Mettke's invention was "not an adequate fit with [its] needs to justify further investigation." HP further stated that HP must "concentrate [its] efforts on those which are most consistent with [its] other strategies and which leverage [its] corporate strengths."

16. Subsequently, HP publicly announced an agreement with North to jointly market networked multimedia kiosks, equipped to support kiosk-based Web access.

17. On information and belief, HP, either by itself or through its subsidiaries, affiliates, or agents, did and still does manufacture, offer for sale, sell, and/or use networked multimedia kiosks in the United States that were and are covered by the patent-in-suit.

18. On information and belief, North, either by itself or through its subsidiaries, affiliates, or agents, did and still does manufacture, offer for sale, sell, and/or use networked multimedia kiosks in the United States that were and are covered by the patent-in-suit.

19. On February 11, 1997, the '905 patent issued to Mettke.

VI. Count I - Patent Infringement

20. On information and belief, Defendants have infringed and continue to infringe the patent-in-suit within this District, by themselves and through others, manufacturing, offering for sale, selling, and/or using products employing the invention of the patent-in-suit, without authority or license from Mettke.

21. On information and belief, Defendants have improperly profited and continue to improperly profit by their infringing activities.

22. Mettke seeks an award of damages adequate to compensate for all of the infringements of Defendants, but in no event less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

23. On information and belief, the actions of HP in infringing the patent-in-suit were willful, deliberate, wanton, and reckless, and make this an exceptional case within the

meaning of 35 U.S.C. § 285. Accordingly, Mettke requests that the damage awarded by the Court be trebled as permitted by 35 U.S.C. § 284, and that reasonable attorneys fees be awarded under 35 U.S.C. § 285.

24. Because of the infringements of Defendants, Mettke has suffered and will continue to suffer irreparable damage and injury for which he has no adequate remedy at law. This irreparable damage and injury will continue for as long as Defendants continue to manufacture, have manufactured, offer for sale, sell or use, either directly or indirectly, products within the United States embodying the invention claimed in the patent-in-suit. Therefore, Mettke seeks an injunction under 35 U.S.C. § 283 to prevent any continuing infringement.

RELIEF REQUESTED

WHEREFORE, Plaintiff requests as follows:

- (a) that this Court adjudge that Mettke is the owner of United States Letters Patent No. 5,602,905, and is entitled to the right of recovery thereunder;
- (b) that this Court adjudge that the patent-in-suit is valid in law and that Defendants have infringed the patent-in-suit;
- (c) that a permanent injunction be issued enjoining Defendants and those in privity with Defendants from further infringement of the patent-in-suit;
- (d) that an accounting be had for the damages arising out of Defendants' infringing activities;
- (e) that Mettke be awarded damages adequate to compensate for Defendants' infringing activities, including all profits arising as a result of such

infringements, but in no event less than a reasonable royalty, together with
prejudgment and post judgment interest thereon and costs as fixed by the Court,
as provided by 35 U.S.C. § 284;

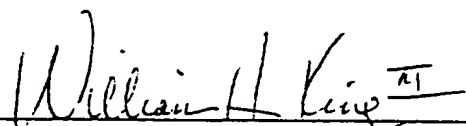
(f) that the damages so found be trebled by this Court, as provided by
35 U.S.C. § 284;

(g) that Mettke be awarded his reasonable attorneys fees, costs, and
expenses in this action; and

(h) that this Court grant Mettke such other and further relief as it may
deem just and proper.

PLAINTIFF DEMANDS TRIAL BY STRUCK JURY

Respectfully submitted,



One of the Attorneys for Plaintiff

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION

RECEIVED

RICHARD P. METTKE,
Plaintiff

vs.

HEWLETT PACKARD COMPANY and
NORTH COMMUNICATIONS, INC.,
Defendants

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CASE NO. CV-97-TMP-3160-E

ANSWER OF DEFENDANT NORTH COMMUNICATIONS, INC.
AND JURY DEMAND

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Defendant, NORTH COMMUNICATIONS, INC. (hereinafter "North"), without waiving its objection to Magistrate Judge's recommendation, and for its responses to each of the respective paragraphs contained in Plaintiff's Original Complaint states as follows:

I.

With specific reference to Plaintiff's Original Complaint, Defendant North generally denies each and every allegation therein, but for the exceptions and provisions as follows:

1. Denies for lack of knowledge sufficient to form a belief as to the allegations contained in paragraph 1.
2. Denies for lack of knowledge sufficient to form a belief as to the allegations contained in paragraph 2.
3. Admits the allegations contained in paragraph 3.
4. Denies the allegations contained in paragraph 4.
5. Denies the allegations contained in paragraph 5.

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6. Denies the allegations contained in paragraph 6.
7. Denies the allegations contained in paragraph 7.
8. Denies the allegations contained in paragraph 8.
9. Denies for lack of knowledge sufficient to form a belief as to the allegations contained in paragraph 9.
10. Denies the allegations contained in paragraph 10.
11. Denies the allegations contained in paragraph 11.
12. Denies the allegations contained in paragraph 12.
13. Denies for lack of knowledge sufficient to form a belief as to the allegations contained in paragraph 13.
14. Denies for lack of knowledge sufficient to form a belief as to the allegations contained in paragraph 14.
15. Denies for lack of knowledge sufficient to form a belief as to the allegations contained in paragraph 15.
16. Denies the allegations contained in paragraph 16.
17. Denies for lack of knowledge sufficient to form a belief as to the allegations contained in paragraph 17.
18. Denies the allegations contained in paragraph 18.
19. Denies for lack of knowledge sufficient to form a belief as to the allegations contained in paragraph 19.
20. Denies the allegations contained in paragraph 20.
21. Denies the allegations contained in paragraph 21.
22. Denies the allegations contained in paragraph 22.

23. Denies the allegations contained in paragraph 23.
24. Denies the allegations contained in paragraph 24.

II.

AFFIRMATIVE DEFENSES

25. U.S. Patent 2,602,905 (“the patent in suit”) is not infringed by any product made, used sold or offered for sale by North.

26. The patent in suit is invalid under one or more of the following provisions of Title 35 of the United States Code §§101, 102, 103, 112 and 282.

27. Mettke is estopped under the doctrine of file wrapper estoppel from asserting that any product of North infringes the patent in suit.

III.

COUNTERCLAIM FOR DECLARATORY JUDGMENT

28. This is a declaratory judgment counterclaim under 28 U.S.C. §§2201-2202 and an actual controversy exists within the jurisdiction of this Court. It is requested that this Court declare that none of the kiosk products made, sold or offered for sale by North or used by North’s customers infringe any claim of the patent in suit and that the patent suit is invalid.

29. North sells various models of interactive kiosks. North is under reasonable apprehension by virtue of the Complaint in this civil action that North kiosks have been charged with infringement under one or more claims of the patent in suit.

30. A reasonable investigation would have shown that none of North’s kiosk infringes any claim of the patent in suit either directly or under the doctrine of equivalents.

31. On information belief all claims of the patent in suit are invalid under one or more provision of the U.S. Code, namely, 35 U.S.C. §§101, 102, 103, 112, 282.

IV.

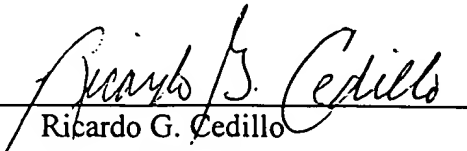
RELIEF REQUESTED AND JURY DEMAND

WHEREFORE North respectfully requests a jury trial and prays that this Court dismiss the Complaint with prejudice and enter judgment as follows:

- A. A declaration that none of North's Kiosk infringes any claim of the patent in suit.
- B. A declaration that the patent in suit is invalid.
- C. A declaration that this is an "exceptional case" under 35 U.S.C. §285 and North is entitled to an award of reasonable attorney's fees, costs and expenses.
- D. An award of court costs against Mettke, and
- E. Such further relief as may be just and equitable under the circumstances.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Answer of North Communications, Inc., has, this 15th day of July 1998, been forwarded by First Class U.S. Mail to:

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